urged by Mr. Edwin Tsen is against the rule of construction which presumes that (in the absence of clear, express provisions to the contrary, and there is none in our case) a contracting party is not permitted to take advantage of his own wrong as against the other party. See **Chity on Contracts,** 26th Edn, Vol. 1, at para 1681.

I should add that though the learned Sessions Judge was wrong in admitting and considering the oral evidence which, Mr. Edwin Tsen argued, went to support the existence of the collateral agreement whereby the agreement in question was not to be sued on, meaning, the debt was not to be a debt, I cannot say that the learned Sessions Judge was wrong in coming to the conclusion that the oral evidence led in this case does not support the alleged collateral agreement, especially in the light of the indisputable evidence that I have set out, *supra;* especially the documents emanating from the appellants or executed by them admitting the debt.

I therefore dismiss the appeal with costs to be taxed.

HARUN BIN YAAKOB & 66 ORS.

v.

AHEAD DEVELOPMENT SDN. BHD.

HIGH COURT MALAYA, ALOR SETAR
TUAN MOHD HISHAMUDIN BIN MOHD YUNUS JC
[CIVIL SUIT NO. 23-97-93]
12 JUNE 1994

PRACTICE & PROCEDURE: Further arguments - Application to strike out plaintiffs' claim - Single claim made by plaintiffs in respect of individual sale and purchase agreements - Contention that plaintiffs should not have filed single writ as plaintiffs have separate causes of action - Defendant seeking to strike out claim in toto pursuant to O.15 r.5 RHC - Whether proper.

67 plaintiffs purchased units of houses from the defendant, developer in a housing scheme called Taman Bandar Baru. Being dissatisfied with the defective workmanship and materials used the plaintiffs filed a single suit claiming special damages of RM15,000 each. The defendant filed an application to strike out the claim pursuant to O. 15 r. 5 of the Rules of the High Court 1980 (RHC) which was dismissed in chambers. Upon further arguments the defendant contended that as each of the plaintiffs entered into a separate sale and purchase agreement referring to a different unit, they each had a separate cause of action which should not have been filed in a single writ.

Held:

[1] In the present case, the Court accepted that each plaintiff had a separate cause of action. However, in view of the nature of the relief, that is, that the writ and statement of claim be struck off *in toto*, the Court declined to make any determination as to whether separate writs should be filed. For the present application made pursuant to O. 15 r. 5(1) of the RHC, the proper prayer was to apply for an order that there be separate trials (or, depending on the situation, for such order as may be expedient). It was highly irregular to apply for an order that the writ and statement of claim be struck off *in toto*. Indeed the Court did not think that it had the power to do so under this particular order. Therefore the present application was misconceived.

[Order dismissing defendant's application confirmed].

Legislation referred to:
Rules of the High Court 1980, O. 15 r. 5(1)

For the applicant / defendant - Murali; M / s. Ghazi & Lim
For the respondent / plaintiff - T. Jegathesan; M / s. Jega & Associates

JUDGMENT

Mohd Hishamudin Bin Mohd Yunus JC:
All the 67 plaintiffs are purchasers of units of houses in a housing scheme known as Taman Bandar Baru in Sungai Petani. They purchased the units from the defendant-the developer who built the houses. They are very dissatisfied with the houses that they have bought. The plaintiffs, in their statement of claim, allege, among other things, that the defendant had not built the houses according to the agreed specifications, that the workmanship was poor, that the materials used were substandard, and that the houses suffered serious defects such as cracks. Each of them only claims a special damage of RM15,000, being the cost of rectification works (originally, there was also a claim for general damage, but this claim was subsequently abandoned).

The defendant now filed this application to strike out the writ and the statement of claim. However, it is not stated, either in the summons or in the supporting affidavit, under which provision of law is the application made. But at the commencement of the hearing in chambers, learned Counsel for the defendant, Encik Murali, informed the Court that this application is made pursuant to O. 15 r. 5 of the Rules of the High Court.

Order 15, r. 5 states:

> **Court may order separate trials, etc.**
>
> [15]5(1) If claims in respect of two or more causes of action are included by a plaintiff in the same action or by a defendants are parties to the same action, and it appears to the Court that the joinder of causes of action or of parties, as the case may be, may embarras or delay the trial or is otherwise inconvenient, the Court **may order separate trials or make such other order as may be expedient.**
> (Emphasis added)

At the hearing of further arguments in open Court, Encik Murali argues that since each of the plaintiffs had made a separate sale and purchase agreement with the defendant and that each claim refers to a different unit (or house), therefore each plaintiff has a separate cause of action. And it is further argued that since each plaintiff has a separate cause of action, therefore, the plaintiffs should not have filed a single writ as has been done in the present case. It is inconvenient. Each plaintiff should file a separate writ. Accordingly, learned Counsel applies that the writ and the statement of claim be struck off.

In the present case. I accept that each plaintiff has a separate cause of action. However, in view of the nature of the relief claimed (that is, that the writ and the statement of claim be struck off *in toto*), I do not propose to make any determination as to whether or not separate writs should be filed. For the purpose of disposing of this application, it is, to my mind, sufficient for me to say that in an application made pursuant to O. 15 r. 5(1) of the Rules of the High Court, such as the present one, the normal and proper prayer is to apply for an order that there be separate trials (or, depending on the situation, for such other order as may be expedient). And it is highly irregular to apply for an order that the writ and the statement of claim be struck off *in toto*. Indeed, I do not think that I have the power to do so (i.e. to strike off the writ and the statement of claim *in toto*) under this particular order. Therefore, I rule that the present application is misconceived.

Accordingly, I confirm the order that I had made in chambers on 6 March 1994.